#10 Decl. 7/8/00

EXPEDITED PROCEDURE - AMENDMENT AFTER FINAL REJECTION IN A REISSUE APPLICATION

S/N 09/241,825 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Mark Lyte	Examiner: H. Lilling
Serial No.:	09/241,825	Group Art Unit: 1651
Filed:	February 1, 1999	Docket: 933.001USR
Title:	COMPOUNDS FOR MODULATING THE GROWTH OF INFECTIOUS AGENTS	

Assistant Commissioner for Patents
BOX AF (REISSUE APPLICATION)
Washington, D.C. 20231

DECLARATION OF MARK A. LITMAN

I, Mark A. Litman, am an attorney of record in the above identified Reissue Application, and do state and declare as follows:

1. I am an attorney registered to practice before the U.S. Patent and Trademark Office under Registration No. 26,390.

2. I am an attorney of record in the above identified Reissue patent Application S.N. 09/241,825.

3. I have personally met with Dr. Mark Lyte to discuss an Office Action on the Reissue Application, the Office Action having a mailing date of March 24, 2000.

4. In response to that Office Action, and in particular a request by the Examiner for evidence that Dr. Lyte had given instructions and requests to the previous counsel on responses to the Office Actions and did not intend to abandon claims to enhancement of growth rates, Mr. Lyte sent me by facsimile a copy of a letter he identified to me as having been sent to previous counsel on his Patent.

5. I personally made a copy of that letter, and that copy is attached to the declaration with my own ink-writing thereon identifying it as Exhibit 1.

6. I personally inspected the files transferred to me by previous counsel, and found a letter that was identical to that provided to me by Dr. Mark Lyte, except that the letter in the file had a date of receipt stamped on it from the previous firm.

7. I have personally copied the letter in the file history and hand-written thereon "Exhibit II."

8. I believe that the letter provided to me by Dr. mark Lyte was authentic as it matches

the letter received by previous counsel and inserted into the file.

FURTHER DECLARANT SAYETH NOT.

Signed this 25th day of June 2000 _____.

Mark A. Litman
Registration No. 26,390

This is the second of two pages of a declaration by Mark A. Litman authenticating a letter mailed on February 14, 1994.

Mankato
STATE UNIVERSITY

Exhibit I

Department of Biological Sciences

February 14, 1994

Mr. Orrin M. Haugen
HAUGEN & NIKOLAI
820 International Center
900 Second Avenue South
Minneapolis, MN 55402

Dear Orrin,

You should have recently received a letter from Dr. Barbara Keating of the College of Graduate Studies instructing you to proceed with a response the second Action. This response to the second Action may follow one of several procedures as you outlined in your letter of January 5, 1994 to Dr. Keating with the filing of a second amendment holding the most promise for success.

As we discussed on the phone, the response of the Examiner in rejecting the Claims centers on the fact that others have introduced catecholamines into host medium as well as contemplating the in vivo use of catecholamines. As stated in the Request for Reconsideration 07/847,196 filed September 17, 1993 the cited references refer to the action of catecholamines solely through a immunologically based mechanism of action. No direct action of catecholamines on bacterial growth is even contemplated. How the Examiner still believes that these references contemplate my discovery solely on the basis that the references "call for the introduction of catecholamines into the host medium" is beyond scientific (or rational) logic. Any use of the references' methods and application of said inventions would have to be based on immunological phenomena and they do not even contemplate host medium being devoid of immune cells. The Examiner obviously believes that because these prior references also introduced catecholamines into host medium that this negates my patent application. I am obviously not a patent lawyer, but how is the practice of the art of these prior references comparable to mine if the ability to practice the prior art is based on immunological cell phenomena while mine is based on direct, non-immunologically based action. The methods and tools one would use to practice the two arts would be based on totally different methodologies and approaches; just saying both introduce catecholamines into host medium such as blood is not enough to say that both of the arts are the same. The use of my invention which calls for a direct action of catecholamines on bacterial growth states a direct methodology for the control of bacterial growth which can be practiced as a distinct art from what the other references claim because of the direct action of the catecholamines on the bacteria whereas the other references claim immunological based mechanisms of action to practice the art. This point has been recognized by every scientific body at which these results have been presented. I am at a further loss on how to explain this obvious distinct, major difference between my work and those that the Examiner has chosen to cite.

In the past I have not been adequately consulted by either Deb Parrish or Tom Naber before they have filed final patent applications or responses to Actions. For example, I did not see the Request for Reconsideration S.N. 07/847,196 that Mr. Naber filed September 17, 1993 until January 8, 1994 when Dr. Keating gave me a copy of your January 5, 1994 letter to her. I would be grateful if I could be sent a copy of the Response to the Second Action before it is filed so that I may have a chance to comment

on it before it is filed.

Sincerely,

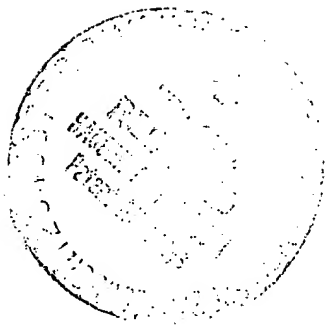
Mark Lyte, Ph.D., MT(ASCP)
Associate Professor
Tel: (507) 389-1229
FAX: (507) 389-2788

cc: Dr. Barbara Keating, College of Graduate Studies

Mankato
STATE UNIVERSITY

Exhibit II

Department of Biological Sciences



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